

General Information Letter: Special allocation rules for income received from an investment partnership do not apply to tax years ending prior to July 30, 2004.

July 31, 2006

Dear:

This is in response to your letter dated July 18, 2006, which has been forwarded to me for review. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

In your letter you have stated the following:

We recently received the enclosed notice stating that your records indicate a 2003 Business Income and/or Replacement Tax return should have been filed due to the receipt of income from a partnership or subchapter S corporation.

During the 2003 tax year FUND1, LP (EIN: XX-XXXXXXX) owned an interest in FUND2, LP (EIN XX-XXXXXXX). FUND2 is domiciled in the state of Illinois; however, FUND2 is an investment partnership and the income is portfolio in nature; thus should not be sourced to Illinois. Because your notice does not provide detail with respect to the cause of an Illinois filing requirement, I assume the FUND2 K-1 is the reason. If this is not the case, please send further information which will assist us in determining our correct filing status for Illinois state tax purposes.

Response

Section 305(a) of the Illinois Income Tax Act (35 ILCS 5/305) provides:

The respective shares of partners other than residents in so much of the business income of the partnership as is allocated or apportioned to this State in the possession of the partnership shall be taken into account by such partners pro rata in accordance with their respective distributive shares of such partnership income for the partnership's taxable year and allocated to this State.

For taxable years ending on or after July 30, 2004 (the effective date of Public Act 93-0840), this provision has no application to partners in an "investment partnership," as defined in Section 1501(a)(11.5) of the Illinois Income Tax Act (35 ILCS 5/1501), because the income of an investment partnership is treated as nonbusiness income by the partnership. However, for taxable years of the investment partnership ending prior to July 30, 2004, the investment income of an investment partnership is the partnership's business income. See, for example, Administrative Hearing Decision IT-95-3 (1995). Pursuant to Section 304(a) of the Illinois Income Tax Act (35 ILCS 5/304), an investment partnership that derives no business income from sources outside the Illinois would treat all of its income as business income allocable to Illinois, and, under Section 305(a), each nonresident partner would allocate all of its partnership share in that income to Illinois. Accordingly, the fact that FUND2, LP might qualify as an investment partnership under Public Act 93-0840 is not

relevant to the determination of the tax liabilities of its partners for its tax year ending December 31, 2003.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax